

Managing Long-Term Leave of Absence



**Chief Executive Office
Risk Management
Return To Work Unit**

Managing Long-Term Leave of Absence

- Employees on Long-Term Leave (LTL) of Absence are those on approved, continuous leave **beyond six months**.
- At the direction of the Board of Supervisors, County departments are to identify the number of employees on LTL of absence and whether their leaves are being actively managed.

Managing Long-Term Leave of Absence

- The longer an employee is off work, the less likely it is that they will return to work. Therefore, it is important to stress that the County has an early RTW program and can accommodate employees with work restrictions.
- Active management of LTL cases is necessary in order to identify a plan of action for LTL employees.
- Identify: what is preventing the RTW process from moving forward?

Managing Long-Term Leave of Absence

- For employees that fail to provide current medical certification supporting their need to remain off work, or employees that are non-responsive:
 - Considered non-approved leaves and job abandonment and should be addressed by established performance management (PM) procedures or Civil Service Rule (CSR) 16.
 - For PM procedures, consult with your department's PM Section for the appropriate course of action.
 - When implementing CSR 16, consult with the CEO.

Managing Long-Term Leave of Absence

Intent of the program:

- Improve the management of employees on Long Term Leave (LTL)
- Reduce the number of employees on LTL
 - Return EE to work that is compatible with work restrictions
 - Medical Release
 - Disability Retirement
 - Civil Service Rule 16
 - Release from County service utilizing Performance Management

Interactive Process

- Under the Americans with Disabilities Act (ADA) and California's, Fair Employment and Housing Act (FEHA), there is an express requirement that employers must engage in a prompt interactive process to explore reasonable accommodation of a known disability.
- Failure to show prompt interactive process is the most common violation, and is easily ascertainable by investigating enforcement agencies (EEOC for ADA; DFEH for FEHA).

Just because an employee is on LTL does not excuse the department's responsibility from engaging in the interactive process.

Interactive Process cont...

- Disability may be known through an employee request, inquiry, or otherwise available information.
- Interactive process meeting (IPM) must be a continuing process. Employer must continue to consider requests or information submitted by employee.
- The IPM is a conversation between employer and employee: it must be flexible, timely, and in good faith.
- Employer must consider all information provided but does not have to offer the exact accommodation requested as long as some reasonable accommodation is offered.

Reasonable Accommodation

- The longer an employee is off work, the more difficult it becomes to return them to work. Therefore, it is important to interact with the employee from the beginning, and to maintain regular contact.
- If an employee can no longer perform the essential job functions (EJF) of his/her former position, departments have an obligation in the interactive process to consider **transferring an employee to an alternative assignment or vacant position.**
- For transfer, employee must meet minimum qualifications for new position; need not be the “most qualified.”

Reasonable Accommodation

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- Providing paid or unpaid leaves of absence, when the employee cannot perform their duties or extending a leave provided by CFRA, FMLA, or other disability leave laws may be considered a reasonable accommodation.
- An employer is not required to provide an indefinite leave of absence as a reasonable accommodation (CSR 16.02 and 16.04).

Long-Term Leave of Absence Reporting

Consider the following steps when reviewing the AMS report of LTL employees for establishing a plan of action:

1. When feasible, **return employees to suitable positions** consistent with their knowledge, skills, and abilities, taking into considerations work restrictions, if any, in their own department.
2. If no position in their department is suitable, the department may submit a request to the Department of Human Resources (DHR) to explore the Interdepartmental Reassignment of Employees using the **Policies, Procedures, and Guidelines (PPG) 621**.

Long-Term Leave of Absence Reporting

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3. Identify and group employees in LACERA Contributory Retirement plans A-D and G.
 - Group and verify that employees transferring from Plan E to D in the LACERA Retirement plan have fulfilled the required obligation.
4. Identify and group employees in LACERA Non-Contributory Retirement plan E.

The Retirement Plan will help guide in identifying the most appropriate plan of action

Long-Term Leave of Absence Reporting

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5. Identify and group employees on approved unpaid leaves of absence for longer than 12 months.
 - **Pursuant to Civil Service Rule 16.02 and 16.04, employees on unpaid leave status for longer than 12 months require approval from the Director of Personnel to remain on an approved leave.**

Consider the following for:

LACERA Contributory Plan A-D, G members

- ➡ Approval of Long-Term Disability (LTD) to age 65, based on Social Security Disability criteria for Total Disability.
- ➡ California Government Code section (CGC) 31721 (Disability Retirement)
- ➡ CGC section 31725, part of the County Employees Retirement Law of 1937, provides in part, “**Permanent incapacity for the performance of duty shall in all cases be determined by the Board of Retirement.**”
- ➡ LACERA Retirement Board notice that EE’s Disability Retirement application has been suspended and a decision cannot be made on the retirement application because the employee refused to cooperate as required in the retirement process.
- ➡ CSR 9.07 (Medical Reevaluation) and 9.08 (Partially or fully incapacitated employees [Medical Release])

Consider the following for:

LACERA Non-Contributory Plan E members

- ➡ Approval of Long-Term Disability (LTD) to age 65, based on Social Security Disability criteria for Total Disability.
- ➡ CSR 9.07 (Medical Reevaluation) and 9.08 (Partially or fully incapacitated employees [Medical Release])
- ➡ Any Occupation: For Industrial and Non-Industrial (injuries/illness)
- ➡ If permanently disabled, EE may be medically released. If approved, EE is released from County service for medical reasons and has reinstatement rights for two years.

Consider the following for:

Members Transferring from Plan E to D

- ▶ LACERA Retirement Board notice is received stating application is denied due to a determination of ineligible criteria of the following:
 - ✱ Eligible after completion of two continuous years of active service; or
 - ✱ Earn five years of retirement service credit under retirement Plan D

Effective January 1, 2011 – Post Assembly Bill (AB) 1902.

Managing Long-Term Leave of Absence

All LACERA Retirement Plan Members

RELEASING AN EMPLOYEE FOR NON-MEDICAL REASONS (Civil Service Rule 16)

(RELEASE FOR CAUSE THROUGH SKELLY PROCESS)

Civil Service Rules:

16.02: Leaves of absence without pay:

When such leave is longer than 12 months, it must be approved by the director of personnel (DOP).

Managing Long-Term Leave of Absence

All LACERA Retirement Plan Members

If the DOP does not approve the extension of the EE's leave beyond 12 months, the EE is required to RTW forthwith. An EE that fails to RTW upon termination of leave shall be considered to be absent without leave and subject to disciplinary action.

16.04: Expiration or termination of leaves of absence:

The appointing power may terminate any leave of absence by written notice to the employee concerned whenever the conditions or reasons justifying the leave no longer exists.

Employee may appeal the department's decision by providing supporting documents to substantiate the continued need for leave

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All LACERA Retirement Plan Members

Most common triggers for CSR action:

- ➡ Applies to leaves of absence with or without pay in excess of 12 months.
- ➡ EE is out on an approved LTL for disability as a reasonable accommodation and refuses to provide a medical certification to justify the continued need for leave.
- ➡ AP determines that the reasons/conditions justifying the leave no longer exist, and is supported by objective medical evidence.
- ➡ AP determines that the cause for granting the leave was misrepresented by the EE.
- ➡ AP determines that such leave is longer than 12 months and the EE is not approved for STD/LTD benefits.

Differences between CSR 16, Medical Release, and Disability Retirement

CSR 16	Medical Release	Disability Retirement
Applies to employees in <u>any</u> retirement plan.	EE must be in a <u>non-contributory</u> retirement plan or meet certain qualifications if in a contributory plan.	Applies to employees in <u>contributory</u> retirement plans only.
To be used on employees out 12+ months.	<i>May</i> be utilized on employees out fewer than 12 months.	
Utilized when conditions/reasons justifying the leave no longer exist; when the cause for granting the leave was misrepresented; or when the leave is not in the best interest of the County.	Utilized when EE has been found to be permanently disabled and unable to work in <u>Any Occupation</u> and/or EE has been approved for Social Security Disability (SSD) to age 65.	Utilized when EE has been found to be permanently incapacitated and unable to work in <u>Own Occupation</u> .
EE is not approved for STD/LTD benefits.	EE may be approved for STD/LTD benefits.	
No reinstatement rights.	Reinstatement rights for two years.	No reinstatement rights.
Must consult with CEO when utilizing CSR 16 for Disability and Reasonable Accommodation Matters.	Department must obtain concurrence from CEO.	Consultation with CEO is not Necessary.

ANY QUESTIONS???

